UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

PATRICK J. SPICER,	:	
	:	
Plaintiff(s),	:	
v.	:	Case No.
	:	Jury Trial Demanded
EQUIFAX INFORMATION SERVICES, LLC.,		
Defendant(s).		

______________________________________/

COMPLAINT

The Plaintiff, Patrick J. Spicer ("Plaintiff"), by and through her attorney, the Law Offices of Nicholas A. Reyna P.C., alleges the following:

Nature of Action

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued function of the banking system. Congress enacted the Fair Credit Reporting Act, 15 U.S.C 1681 et seq. ("FCRA") to insure fair and accurate reporting, promote efficiency in the banking system and protect consumer privacy. The FCRA seeks to ensure consumer reporting agencies exercise their grave responsibilities with fairness, impartiality and a respect for the consumers right to privacy because consumer reporting agencies have assumed such a vital role in assembling and evaluation consumer credit and other information on consumers.

Parties

2. Plaintiff Patrick J. Spicer is a citizen of Michigan residing in Coral, Michigan. Defendant Equifax Information Services, LLC ("Equifax") is a foreign profit corporation and credit information provider which maintains its principal office in Atlanta Georgia.

Jurisdiction and Venue

3. This Court has jurisdiction under 15 U.S.C. § 1681p and 28 U.S.C. § 1367 and 1331.

4. Venue is proper in this Court under 28 U.S.C. 1391 as the Defendant transacts business in this jurisdiction.

Factual Background

5. On or around October 1, 2005, the Plaintiff executed a mortgage loan with creditor Fifth Third Bank (account number beginning 4014) concerning a single family home located at 15807 Sherman Street in Montcalm, Michigan; unfortunately due to unforeseen financial hardship, the Plaintiff subsequently became unable to make the required payments toward the mortgage and as a result a Mortgage Sale was ultimately commenced on April 17, 2014 which divested the Plaintiff of all interest in the property and corresponding mortgage loan. Such was memorialized by Sheriff's Deed executed on that same date (*see Exhibit A*).

6. In May, 2017, having been made aware of possible reporting irregularities being put forth by each of the three credit reporting agencies specific to the Fifth Third Bank account, the Plaintiff submitted a request by mail for copies of each of his three annual credit reports, with the Defendant forwarding a report to the Plaintiff's attention

dated May 23, 2017 (*see Exhibit B).*

7. Upon receipt, the Plaintiff identified several deficiencies in the credit report provided by the Defendant as related to the subject Fifth Third Bank account, specifically that such (a) incorrectly stated the mortgage as foreclosed and sold for the value of the loan when in fact Fifth Third had bid at Sheriff's auction for the amount due under the loan and (b) reported the underlying debt subject to foreclosure with reference to a current balance and past due amounts despite the collateral having been sold and the referenced debt having been effectively extinguished as a result (*Exhibit B).* As a result, on June 28, 2017 the Plaintiff prepared and mailed a dispute letter to the Defendant outlining these deficiencies and requesting the reporting be appropriately updated to correct the foregoing facts (*see Exhibit C*).

8. On or around July 16, 2017 Equifax, having presumably conferred with the relevant creditor upon receipt of the Plaintiff's dispute and requesting they provide appropriate verification of the inaccurate information in dispute, subsequently forwarded an updated credit report in response to the Plaintiff's dispute (*see Exhibit D*). While this response did amend the previous reporting specific to the Fifth Third Bank account to reflect a current balance amount of $0.00 and added reference to "Foreclosure" in the ADDITIONAL INFORMATION section, it continued to falsely state the following: "Status- **90-119 Days Past Due**." Indeed, this is the first language provided specific to this account, effectively superseding the reference to "Foreclosure" contained thereafter. In fact, even the latter language is presented generally without a specific suggestion that such represents the current account status; it seems entirely reasonable to suggest that the average creditor in undertaking a cursory review of the account status would see the past

due language at the start of the report, combined with the lack of specificity related to the report's use of "foreclosure," and come to the conclusion that account in fact remains currently past due despite but and at the same time reports a ZERO balance.

9. To confirm, neither the Experian nor Trans Union reports provided to the Plaintiff utilized this exact language. Indeed, the July 15, 2017 dispute response provided by Trans Union (*see Exhibit E*) is instructive on how this account reporting should have actually been revised to ensure factual accuracy-

FIFTH THIRD BANK #40141**** (5050 KINGSLEY DR, M/D 1MOC2I, CINCINNATI, OH 45263, (800) 972-3030)

Date Opened:	10/25/2005	**Balance:**	$0	**Pay Status:**	›Account 90 Days Past Due Date‹
Responsibility:	Individual Account	**Date Updated:**	04/30/2014	**Terms:**	$408 per month, paid Monthly for 180 months
Account Type:	Mortgage Account	**Last Payment Made:**	09/05/2013	**Date Closed:**	04/30/2014
Loan Type:	CONVENTIONAL REAL ESTATE MTG	**High Balance:**	$50,000		›Maximum Delinquency of 90 days in 12/2013 and in 04/2014‹

Remarks: ›FORECLOSURE COLLATERAL SOLD‹
Estimated month and year that this item will be removed: 09/2020

	03/2014	02/2014	01/2014	12/2013	11/2013	10/2013	09/2013	08/2013	07/2013	06/2013	05/2013	04/2013
Rating	FC	FC	FC	90	60	30	OK	OK	OK	OK	OK	OK
	03/2013	**02/2013**	**01/2013**	**12/2012**	**11/2012**	**10/2012**	**09/2012**	**08/2012**	**07/2012**	**06/2012**	**05/2012**	**04/2012**
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
	03/2012	**02/2012**	**01/2012**	**12/2011**	**11/2011**	**10/2011**	**09/2011**	**08/2011**	**07/2011**	**06/2011**	**05/2011**	**04/2011**
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
	03/2011	**02/2011**	**01/2011**	**12/2010**	**11/2010**	**10/2010**	**09/2010**	**08/2010**	**07/2010**			
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK			

To confirm, while Trans Union does retain "past due" language specific to the Fifth Third account, it moves further by adding specific reference to maximum delinquency dates in 12/2013 and 4/2014, both of which were obviously then superseded by the subsequent foreclosure, which Trans Union further and more clearly labels "FORECLOSURE COLLATERAL SOLD." The reporting of Trans Union makes clear and demonstrable the true status of the account at issue in a way the Equifax report demonstrably fails to do.

10. Equifax maintained the inaccurate information in the Plaintiff's consumer file as a result of the verification from the source(s) of the inaccurate information, and Equifax's own failure to conduct a proper, reasonable reinvestigation of the inaccurate information.

11. The Defendant is specifically and now solely responsible, given the alternative responses of Experian and Trans Union, for purposefully reporting the account as though it were not in fact subject to a foreclosure sale of the underlying collateral which satisfied the previous balance of the Plaintiff in full and thus could not have left him with a current past due balance status. Despite the Plaintiff's request that the information be revised to reflect these facts, the Defendant simply failed to far enough in revising the report, leaving potential creditors reviewing same with the potential to be confused about the account's current status.

12. The Sixth Circuit applies a "technical accuracy" standard for FCRA claims. *Dickens v. Trans Union Corps*., 18 F. App'x 315, 318 (6th Cir. 2001); *Garrett v. Trans Union*, 2006 WL 2850499, at *10 (S.D. Ohio 2006); see also *Cahlin v. Gen. Motors Acceptance Corp*., 936 F.2d 1151, 1156 (11th Cir. 1991) (describing different standards for accuracy under FCRA). Under this standard, information is accurate if it is factually correct, even if it could be "misleading or incomplete in some respect." *Dickens, 18 F. App'x at 318*. Whether information is factually correct is viewed from the perspective of a <u>creditor</u>, not a lay person. *Id*; *Elsady v. Rapid Glob. Bus. Sols., Inc.*, 2010 WL 2740154, at *7 (E.D. Mich. 2010). The Defendant reported a mortgage account with a $0 balance while also simultaneously implying that the account is <u>currently</u> "90-119 Days Past Due," or at a minimum failed to properly revise the Plaintiff's records to add additional facts (as Trans Union did) to clarify that he was not in fact currently past due on the foreclosed mortgage account. Such could obviously prove not only misleading in the eyes of the average creditor reviewing these records, but is also at a more basic level simply a factually incorrect summation of the current status of the account.

13. The reasonableness of a CRA's procedures is normally a question of fact for the jury, unless the reasonableness or unreasonableness is "beyond question." *Sarver v. Experian Info. Sols.*, 390 F.3d 969, 971 (7th Cir. 2004). The standard for determining whether a CRA uses adequate procedures is what a "reasonably prudent person" would do under the circumstances. *Bryant v. TRW. Inc*., 689 F.2d 72, 78 (6th Cir. 1982). Previous cases in this circuit have firmly established that a CRA's procedure can be defined as unreasonable simply where that CRA simply failed to ask for additional information as a means to ensure the accuracy of its' records when faced with a consumer dispute. *Smith v. LexisNexis*, 837 F.3d 604 (6th Cir. 2016). The Plaintiff's initial dispute in this matter plainly requested that the Defendant "not report debt which was subject to a foreclosure sale as past due." The Defendant then had clear and demonstrable notice of this issue, exemplified by the fact that it did revise the balance to $0.00 and added at least a general reference to "foreclosure," but subsequently failed to follow reasonable, minimal procedures to remove any suggestion that the account at issue might remain currently past due.

14. "The duty to correct an incomplete or inaccurate report equally extends to the discovery of both inaccurate or incomplete consumer information and to the discovery of consumer information that is materially misleading." *Boggio v. USAA Fed. Saving Bank*, 696 F.3d 611, 614 (6th Cir. 2012).

15. Consumer reporting agencies pursuant to Section 1681e(b) of the Fair Credit Reporting Act are required to "follow reasonable procedures to assure maximum possible accuracy when preparing a consumer report." *Nelski v. Trans Union, LLC*, 86 F.App'x 840, 844 (6th Cir. 2004). Under this section, "liability flows only from a 'failure to

follow (1) reasonable procedures (2) to assume maximum possible accuracy of the information (3) concerning the individual about whom the information relates. *Id* at 844. To reiterate, the reasonableness standard is "what a reasonably prudent person would do under the circumstances." *Id* at 844.

16. The Sixth Circuit has established that the elements necessary to assert a claim under 1681e(b) involve a Plaintiff proving (1) the Defendant reported inaccurate information about the Plaintiff; (2) the Defendant either negligently or willfully failed to follow reasonable procedures to assure maximum possible accuracy of the information about the Plaintiff; (3) the Plaintiff was injured; and (4) the Defendant's conduct was the proximate cause of the Plaintiff's injury. *Nelski* at 844.

17. A credit report is "inaccurate when it is patently incorrect or when it is misleading in such a way and to such an extent that it can be expected to have an adverse effect." *Poore v. Sterling Testing Systems, Inc.,* 410 F.Supp.2d 557 (E.D.Ky. 2006) See also *Dickens v. Trans Union Corp*., 18 F.App'x 315, 318 (6th Circ. 2001).

18. An FCRA violation occurs when CRAs such as Equifax provide information that creates a "materially misleading impression," that omits material to create "incomplete or inaccurate" information, or even when a furnisher fails to identify that a consumer has disputed his information, when the dispute is a bona fide one that "could materially alter how the reported debt is understood." *Boggio v. USAA Federal Sav. Bank*, 696 F.3d 611, 617-18 (6th Cir. 2012).

19. A plaintiff may also establish actual damages by explaining in sufficient detail the emotional distress and humiliation resulting from his knowledge that a CRA distributed a credit report containing inaccurate information to a third-party. *Bryant*, 487

F. Supp. at 1240; *Garrett*, WL 2850499 at * 11-12. The Plaintiff's previous foreclosure no doubt suggestive of his current financial reality, and the fact that the Defendant continues to report his foreclosed mortgage (already a source of great emotional and mental strain) as current past due, potentially impacting his credit worthiness and ability to move on from that unfortunate event, has left him with a renewed sense of distress and undue mental hardship that he continues to experience to this day.

20. Aside from the foregoing, the Plaintiff seeks equitable damages, including correction of the subject trade line from the Plaintiff's credit report, along with monetary damages, both actual, punitive, and statutory due to the failure of the Defendant to properly modify the account information at issue, in whatever amount a jury finds Defendant liable, plus attorney fees, litigation costs, and court costs.

COUNT I- VIOLATION OF FAIR CREDIT REPORTING ACT BY DEFENDANT EQUIFAX INFORMATION SYSTEMS, LLC

21. Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

22. The Defendant prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced a consumer report regarding the Plaintiff as defined under 15 U.S.C. §1681a.

23. The referenced report contained information about the Plaintiff that was false, misleading, and inaccurate.

24. By failing and/or refusing to properly investigate the Plaintiff's dispute, Equifax willfully refused and failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to one or more third

parties pertaining to the Plaintiff in violation of 15 U.S.C. § 1681e(b).

25. In the alternative, Equifax negligently refused and failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to one or more third parties pertaining to the Plaintiff in violation of 15 U.S.C. § 1681e(b).

26. After receiving the Plaintiff's consumer dispute, Equifax willfully failed to conduct a *reasonable* investigation thereof as required by 15 U.S.C. § 1681i, such verified by the fact that Equifax failed to fully and properly update the account information at issue after the Plaintiff issued his dispute to Equifax, exemplified again by the alternate reporting reflected by Trans Union and simple common-sense review of the account reporting as it has been currently revised.

27. In the alternative, Equifax negligently failed to conduct a reasonable investigation as required by 15 U.S.C. § 1681i for the foregoing reasons.

28. In this instance, it is clear and obvious that Equifax (1) reported inaccurate information about the Plaintiff by misreporting the current status of the Fifth Third Bank account at issue in a manner already outlined in the foregoing paragraphs, (2) the Defendant then either negligently or willfully failed to modify that account information in full following the Plaintiff's dispute, (3) the Plaintiff is now being injured by reporting on the subject account which misidentifies its' current status and fails to definitively confirm in any way, shape, or form that the underlying property was subject to a foreclosure sale and the collateral sold, and (4) but for the Defendant's conduct, that injury would not have occurred. As a result, the Defendant was clearly in violation of § 1681e(b)

29. There is simply no doubt in this instance that the information currently being furnished by Equifax creates a materially misleading impression that the account at issue remains currently past due.

30. As a direct and proximate cause of Equifax's failure to perform its' required duties under the FCRA, the Plaintiff has suffered actual damages, including potential denial of credit, reduced opportunity for credit, increased costs, interest, and fees for credit, along with emotional distress, humiliation, and embarrassment.

31. False information was and continues to be furnished by the Defendant.

32. Upon reinvestigation, Equifax reported erroneous credit information and consciously avoided knowing that the credit information was inaccurate in violation of the FCRA, 15 U.S.C. §1681s2(b).

33. Equifax is liable to the Plaintiff by reason of its' violations of the FCRA in an amount to be determined by a jury together with her reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o.

DEMAND FOR JUDGMENT AND RELIEF

WHEREFORE, based upon the foregoing facts, the Plaintiff respectfully requests the following relief:

(A) Statutory and actual damages in an amount to be determined by the Court.

(B) Deletion or correction of any and all accounts being wrongfully reported by the Defendant.

(C) Statutory costs and attorney fees under the FCRA.

(D) Injunctive relief, including but not limited to correction of the account.

(E) Compensatory and/or punitive damages.

(F) Any other relief which the Court deems appropriate.

Demand for Trial by Jury

Plaintiff demands trial by jury.

RESPECTFULLY SUBMITTED,
LAW OFFICES OF NICHOLAS A. REYNA

Date: October 2, 2017

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